

[TRANSLATION]

Citation: *P. D. v. Canada Employment Insurance Commission*, 2015 SSTAD 1314

Date: November 10, 2015

File number: AD-15-1153

APPEAL DIVISION

Between:

P. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal (the Tribunal) grants leave to appeal before its Appeal Division.

INTRODUCTION

[2] On September 29, 2015, the Tribunal's General Division dismissed the Applicant's appeal on the following three issues:

(a) The Respondent's decision to reconsider the Applicant's benefit claim under section 52 of the *Employment Insurance Act* (the Act), within 36 months after the benefits were paid or became payable, or within 72 months where it determined that a false or misleading statement or representation was made.

(b) The indefinite disqualification from receiving Employment Insurance benefits imposed on the Applicant because he voluntarily left his employment without just cause under sections 29 and 30 of the Act.

(c) The establishment of monies received by the Applicant as earnings under section 35 of the *Employment Insurance Regulations* (the Regulations) and the allocation of those earnings under section 36 of the Regulations.

[3] On October 28, 2015, the Applicant filed an application for leave to appeal before the Appeal Division.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

[6] Subsection 58(2) of the Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

ANALYSIS

[7] In accordance with section 58(1) of the Act, the only grounds of appeal are as follows:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove his or her case.

[9] The Tribunal grants leave to appeal if it is satisfied that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be able to determine, pursuant to subsection 58(1) of the Act, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In his application for leave to appeal, the Applicant submitted that the General Division erred when it dismissed the Applicant's appeal on the issues concerning the allocation of earnings because he had withdrawn his appeals on those issues. He argued that the General Division should have taken into account the withdrawals and not dismissed the appeals. The General Division therefore acted beyond its jurisdiction.

[13] He submitted that the General Division misinterpreted the legal test required when subsection 52(1) of the Act applies. In an appeal subject to that test, he argued that the General Division has a duty and an obligation to confirm whether or not such false or misleading statements were made.

[14] Lastly, he submitted that the General Division should have concluded, considering the evidence before it, that the Applicant had adequately informed the Respondent that he had voluntarily left an employment in 2010 and that, therefore, the Respondent could not conclude that this voluntary leaving had been hidden from it in 2010.

[15] After reviewing the appeal file, the decision of the General Division and the arguments made in support of the application for leave to appeal, the Tribunal concludes that the appeal has a reasonable chance of success. The Applicant raised several questions of jurisdiction, fact and law whose responses might justify setting aside the decision under review.

CONCLUSION

[16] The Tribunal grants leave to appeal before its Appeal Division.

Pierre Lafontaine
Member, Appeal Division